

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

**FREDERICK LEE DURBIN,**

Petitioner,

v.

**GREG PROVINCE, Warden,**

Respondent.

**No. CIV 07-262-JHP-KEW**

**OPINION AND ORDER**  
**DENYING SECOND MOTION FOR APPOINTMENT OF COUNSEL**

Petitioner has filed a second motion requesting the court to appoint counsel [Docket #32]. He still bears the burden of convincing the court that his claim has sufficient merit to warrant appointment of counsel. *McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985) (citing *United States v. Masters*, 484 F.2d 1251, 1253 (10th Cir. 1973)). The court again has carefully reviewed the merits of petitioner's claim, the nature of factual issues raised in his allegations, and his ability to investigate crucial facts. *McCarthy*, 753 F.2d at 838 (citing *Maclin v. Freake*, 650 F.2d 885, 887-88 (7th Cir. 1981)). After examining petitioner's ability to present his claims and the complexity of the legal issues raised by the claims, the court finds that appointment of counsel still is not warranted. *See Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991); *See also Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995). ACCORDINGLY, petitioner's motion [Docket #32] is DENIED.

**IT IS SO ORDERED** this 18th day of October 2010.

  
James H. Payne  
United States District Judge  
Eastern District of Oklahoma